

Appl. No.: 10/634,240
Amdt. dated 05/22/2006
Reply to Office action of March 9, 2006

REMARKS/ARGUMENTS

This amendment is responsive to the Office Action dated March 9, 2006. Applicants would like to thank the Examiner for a timely and thorough review of the above-referenced patent application. Claims 1-26 were previously pending in the application and Claim 26 was previously withdrawn and Claims 2, 7, 9, 12, 14, 16, and 20 have been canceled. Claims 1-25 are rejected. Applicants have canceled Claim 26, which was previously withdrawn as being drawn to a nonelected invention. It is respectfully submitted that, in light of the arguments below, all of the pending claims are now in condition for allowance.

Product-by-Process Limitations

The Office Action includes the same grounds of rejections as were asserted in the previous Office Action dated September 15, 2005. Applicants responded on December 14, 2005 to those rejections by amending independent Claims 1, 15, 17, and 18 to recite that the panel, the ring of the pull feature, or the removable lid is heat staked to the container body. The current Office Action dated March 9, 2006 states that the limitations regarding the lid being heat staked to the container are process limitations within the body of a product claim. The Office Action further states that the determination of patentability in a product-by-process claim is based on the product itself, even though the claim may be limited and defined by the process. The Office Action declares that a product-by-process limitation adds no patentable distinction to the claim, and is unpatentable if the claimed product is the same as a product of the prior art. With regards to Applicants' current pending claims, Applicants respectfully submit that the heat staked limitation does add a patentable distinction to the claim.

As stated in the second paragraph of MPEP 2113, the "structure implied by the process steps should be considered when assessing the patentability of product-by-process claims over the prior art, especially where the product can only be defined by the process steps by which the product is made, or where the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product. See, e.g., *In re Garnero*, 412 F.2d 276, 279, 162 USPQ 221, 223 (CCPA 1979)." Applicants agree that the determination of

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patentability of product-by-process claims is based upon the product itself; however, Applicants respectfully assert that the heat staked limitation is “structure implied by the process steps” and should therefore be considered when determining the patentability of the pending claims. More specifically, Applicants respectfully submit that the heat staked limitation of independent Claims 1, 15, 17, and 18 would impart a heat staked interface to the respective product, which is a distinctive structural characteristic of the final product. A heat staked interface imparts structural characteristics to the claimed containers that are distinctive from the structural characteristics of interfaces formed by adhesives or other alternative processes. Furthermore, in the present case there is no other way to recite the distinguishing structural characteristics of the heat-staked interface between the parts being joined, except to recite that a part is “heat staked” to the other. Accordingly, Applicants respectfully request that the heat staked limitations of Claims 1, 15, 17, and 18 be considered when assessing the patentability of the respective claims. Applicants have presented below arguments relating to each of the respective rejections previously presented in the Applicants’ Amendment filed December 14, 2005, in light of Applicants’ submission that the heat staked limitations do add patentable distinctions to the respective claims.

Rejections Under 35 USC § 102 As Being Anticipated By the Belokin ‘461 Patent

The Office Action rejected Claims 1, 3, 8, 10, 18, 19, 21 and 23-25 under 35 USC 102(b) as being anticipated by U.S. Patent No. 5,123,461 to Belokin, Jr. et al. (“the Belokin ‘461 patent”). To the extent that these rejections would be applied against the previously presented claims in light of Applicants’ comments above, Applicants respectfully traverse.

The Belokin ‘461 patent discloses a container with removable top and bottom ends and with a tapered side wall to accommodate nesting of multiple containers prior to filling with a liquid and after dispensing of the liquid. A threaded cap **134** is provided on the top end of the container and a scored metal disk bottom closure **39** is provided on the bottom end of the container. Independent Claim 1 of the present application recites a panel that is heat staked to the end wall. Similarly, independent Claim 18 recites a removable lid that is attached to the top end of the container body by heat staking. The Belokin ‘461 patent fails to disclose a panel or removable lid that is heat staked to a container or container body. For at least this reason,

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Applicants respectfully submit that Claims 1 and 18, and Claims 3, 8 and 10 and Claims 19, 21 and 23-25 that respectively depend therefrom, are not anticipated by the Belokin ‘461 patent. Accordingly, Applicants respectfully request that the rejections of Claims 1, 3, 8, 10, 18, 19, 21 and 23-25 be withdrawn.

Rejections Under 35 USC § 102 As Being Anticipated By the Bianchi ‘373 Patent

The Office Action rejected Claims 1, 3-5, 8, 10, 11, 18, 19, 21 and 23-25 under 35 USC 102(b) as being anticipated by U.S. Patent No. 5,782,373 to Bianchi (“the Bianchi ‘373 patent”). To the extent that these rejections would be applied against the previously presented claims in light of Applicants’ comments above, Applicants respectfully traverse.

The Bianchi ‘373 patent discloses a metal beverage can having an easy-opening tab on the top of the can and a second easy-opening tab on the bottom of the can. Independent Claim 1 of the present application recites a panel that is heat staked to the end wall. Similarly, independent Claim 18 recites a removable lid that is attached to the top end of the container body by heat staking. The Bianchi ‘373 patent fails to disclose a panel or removable lid that is heat staked to a container or container body. For at least this reason, Applicants respectfully submit that Claims 1 and 18, and Claims 3-5, 8, 10 and 11 and Claims 19, 21 and 23-25 that respectively depend therefrom, are not anticipated by the Bianchi ‘373 patent. Accordingly, Applicants respectfully request that the rejections of Claims 1, 3-5, 8, 10, 11, 18, 19, 21 and 23-25 be withdrawn.

Rejections Under 35 USC § 102 As Being Anticipated By the Manska ‘198 Patent

The Office Action rejected Claims 1-3, 6 and 22 under 35 USC 102(b) as being anticipated by U.S. Patent No. 4,883,198 to Manska (“the Manska ‘198 patent”). To the extent that these rejections would be applied against the previously presented claims in light of Applicants’ comments above, Applicants respectfully traverse.

The Manska ‘198 patent discloses a container with a top **14** on one end and a peelable sealing strip **32** on an opposite end, such that opening the seal while a semi-solid mass, such as

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dog food, is being dispensed from the first end after the top has been removed will release the vacuum pressure inside the container to allow the semi-solid mass to exit the container as a unitary mass. The Manska '198 patent discloses removing the top with an ordinary can opener (col. 2, lines 30-32) and alternative tops such as tops with tear string, foil tear tops, metal tear-off tops, metal band seals, screw-off lids, and pull-off lids (col. 2, lines 46-56). In the present application, independent Claim 1 recites a panel that is heat staked to the end wall. Similarly, independent Claim 18, from which Claim 22 depends, recites a removable lid that is attached to the top end of the container body by heat staking. The Manska '198 patent fails to disclose a panel or removable lid that is heat staked to a container or container body. For at least this reason, Applicants respectfully submit that Claim 1, Claims 3 and 6 that depend therefrom, and Claim 22 are not anticipated by the Manska '198 patent. Accordingly, Applicants respectfully request that the rejections of Claims 1, 3, 6 and 22 be withdrawn.

Rejections Under 35 USC § 103 As Being Unpatentable Over the Bianchi '373 Patent in view of the Tedford '203 Patent

The Office Action rejected Claims 13, 15, and 17 under 35 USC 102(b) as being unpatentable over the Bianchi '373 patent in view of U.S. Patent No. 6,328,203 to Tedford, Jr. ("the Tedford '203 patent"). To the extent that these rejections would be applied against the previously presented claims in light of Applicants' comments above, Applicants respectfully traverse.

As stated above, the Bianchi '373 patent discloses a metal beverage can having an easy-opening tab on the top of the can and a second easy-opening tab on the bottom of the can. The Tedford '203 patent discloses an opening feature for a beverage container wherein a pull tab **11** is adhered to a metallized film **18** to cover a perforation **14** prior to the pull tab being removed to provide access to the perforation.

Referring now to the present application, independent Claim 1, from which Claim 13 depends, recites a panel that is heat staked to the end wall of the container. Similarly, independent Claim 15 recites a panel that is heat staked to the end wall of the container. Independent Claim 17 recites a pull feature that is joined to the panel and that includes a ring that

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is heat staked to the inner edge of the opening in the end wall of the container. Neither the Bianchi '373 patent nor the Tedford '203 patent disclose a panel or a pull feature with a ring that is heat staked to a container. For at least this reason, Applicants respectfully submit that Claim 13, which depends from Claim 1, and Claims 15 and 17 are not unpatentable over the Bianchi '373 patent in view of the Tedford '203 patent. Accordingly, Applicants respectfully request that the rejection of Claims 13, 15 and 17 be withdrawn.

CONCLUSION

In view of the foregoing remarks, Applicants respectfully submit that all of the claims of the present application are in condition for allowance. It is respectfully requested that a Notice of Allowance be issued in due course. Examiner Eloshway is encouraged to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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